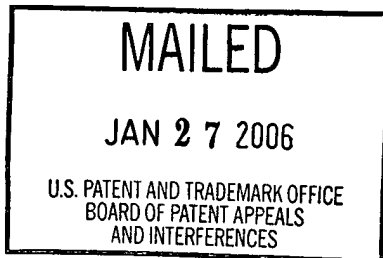


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte LEE A. CHASE, ELDEAN WEIDMAYER and GREGORY R. HAULER



Appeal No. 2005-1698
Application No. 09/775,425

ON BRIEF

Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON REQUEST FOR REHEARING

This is a decision on appellants' request for rehearing (filed November 21, 2005) under 37 CFR § 41.52 of our decision (mailed September 20, 2005) wherein we affirmed the examiner's rejections of claims 1, 10 and 11 as being anticipated by Todd, claims 1, 4, 5, 10, 11, 15, 18-20, 24 and 25 as being anticipated by Beam, claims 1, 4, 6, 8, 11, 13-15, 18, 20, 22, 25, 27 and 28 as being anticipated by Chase, claims 1-3, 9, 11, 15-17, 23 and 25 as being anticipated by Murray, and claims 2, 3, 8 and 9 as being unpatentable over Todd.

The request alleges that our earlier decision mischaracterized appellants' claims as product-by-process claims and ignored structural limitations of the claims.

Appellants argue on page 4 of the request that claim 1 is clearly an apparatus claim that recites the structure of the device and this panel agrees. As pointed out in our earlier decision, the patentability of a product (or apparatus) claim depends on the structure recited therein, not on the method by which it was produced.


Appellants argued in their brief, and continue to argue in their request, that the limitation of claims 1 and 15, that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel, is not disclosed by any of the applied references. Our earlier decision explained on pages 5-6 and 8-9 where each of Todd, Beam, Chase and Murray discloses such limitation and appellants have not pointed to any other limitation in any of the claims which is not met by the applied references. Accordingly, appellants' request fails to persuade us of any error in our earlier decision affirming the examiner's rejections.


In light of the above, appellants' request for rehearing has been granted to the extent of our reconsidering our earlier decision but denied with respect to making any modifications thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED


CHARLES E. FRANKFORT
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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